THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION NO .24111 OF 2002

O R D E R:

This writ petition is filed in the nature of Certiorari calling for the records relating to the impugned Government Memo No.16615/PS-1/2001-1, Edn., dated 3.10.2002 read with Proceedings in Rc.No.1741/D1-4/2001, dated 28.10.2002 issued by the Commissioner & Director of School Education, A.P., Hyderabad, to quash the same and declare that the petitioner is entitled for promotion to the post of B.Ed., Assistant (Social) in the existing retirement B.Ed., Assistant (Social) post in S.M.G. High School, Gundur, Nellore District.

It is the case of the petitioner that she passed B.A., B.Ed., (Social) and was appointed as S.G.Teacher in an aided vacancy in S.M.G. Girls High School, Gudur of Nellore District with effect from 25.08.1988 and since then she has been working in the said post for over 14 years without any complaint. She also passed Headmasters' Accounts Test in September 1992 and as such, she was fully eligible and qualified for promotion to the post of B.Ed., Assistant (Social). Consequent on the retirement of G.Parimala Devi, B.Ed., Assistant (Social), on 31.12.1999 a post of B.Ed., Assistant (Social Studies) arose in the said school. Though the petitioner is fully qualified for the said promotion post of B.Ed., Assistant (Social), her case was not considered for promotion and the said post is still vacant. As the matter stood thus, the Government vide G.O.Ms.No.75, Edn., dated 23.09.2002 issued instructions with regard to the recruitment of vacant aided teaching/non-teaching posts and admission to grant-in-aid. Basing on the said G.O., the second respondent-Commissioner & Director of School Education, Hyderabad sent proposals for absorption of three unaided teaching staff into aided vacant posts

under the management of S.A.L.C., Rapur, Nellore District. Basing on the said proposals, the Government issued a memo No.16615/PS-1/2001-1, Edn., dated 03.10.2002 directing the second respondent for absorption of three teaching staff working in unaided posts into aided posts, including one B.Ed., Assistant post. Basing on the said proceedings dated 03.10.2002, the second respondent issued proceedings dated 28.10.2002 requesting the third respondent for taking necessary action into the matter. Since the petitioner is fully qualified for promotion to the post of B.Ed., Assistant (Social), which is kept vacant for the last two years, the orders issued by the Government, dated 03.10.2002 and the proceedings of the second respondent dated 28.10.2002 will adversely affect the promotional chances of the petitioner. As per the Government orders, the first and second posts are to be filled up by promotion, while the third post is to be filled up by direct recruitment/absorption. The post of B.Ed., Assistant (Social) in S.M.G. High School, Gudur, which has become vacant on 31.12.1999 is the first post of B.Ed., Assistant and therefore, it has to be filled up by promotion. Hence, the question of absorption of Estharammma, B.Ed., Assistant working in unaided post under the management of S.A.L.C., Raipur, Nellore District does not arise and therefore, the impugned order seeking to absorb Estharamma in the existing aided post is illegal and arbitrary.

In the counter affidavit filed by the third respondent-District Educational Officer on his behalf and also on behalf of respondent Nos.1,2 & 4 it is stated that the seniority list submitted by the sixth respondent differs with the seniority list submitted by the earlier management. In the absence of any approval by the department, the petitioner is not entitled to seek the relief under Article 226 of the Constitution of India. It is also stated that following the guidelines issued by the Government in G.O.Ms.No.75, Education dated 23.09.2002, proceedings dated 28.10.2002 were issued by the second respondent for taking necessary action regarding absorption of three unaided teaching staff into aided vacant posts under the management of the sixth respondent. Subsequently, the Government issued G.O.Ms.No.91, dated

12.11.2002 keeping G.O.Ms.No.75, dated 23.09.2002 in abeyance with immediate effect. In that G.O., the Government requested the Commissioner & Director of School Education to issue necessary instructions to all the concerned not to take any further action in pursuance of G.O.Ms.No.75, dated 23.09.2002 until further orders are issued by the Government. In view of the said fact, until revised instructions are received from the second respondent, no further steps will have to be taken regarding the seventh respondent who is working in an unaided post in the management of the sixth respondent. It is also stated that as the seniority list submitted by the sixth respondent differs from the seniority list submitted by the previous management, the second seniority list submitted by the management has to be approved by the department. For filling up the vacancies, the concerned management has to obtain prior permission from the competent authority. As per Rule 12 of G.O.Ms.No.1, dated 01.01.1994, the management has to constitute a Selection Committee after obtaining necessary permission from the Department. Neither the management submitted proposals, nor the department gave any permission to make appointments. The case of the petitioner will be considered only after fulfilling the procedure prescribed. Unless the seniority list is approved by the competent authority, the question of promoting the petitioner to the said post with the permission of the management as per the existing Rules does not arise. As there is a civil dispute between two groups with regard to the management of the institution and unless the dispute is resolved and proposals are forwarded by the management, it is not possible for the department to consider the case of the petitioner and hence, it cannot be said that the action of the department is illegal. In the absence of any proposals sent by the management, it cannot be said that the proceedings issued by the competent authority is illegal and arbitrary. As the proceedings issued by the second respondent, dated 28.10.2002 are perfectly legal and valid, the writ petition is liable to be dismissed.

The learned counsel for the petitioner contended that though the petitioner comes

within the feeder category under G.O.Ms.No.75, dated 23.09.2002 her case has not been considered as per the said G.O. Therefore, she seeks to set aside the impugned Memo, dated 03.10.2002.

On the other hand, the learned Government Pleader for respondents 1 to 3 contends that as the department has not submitted the seniority list before the competent authority for approval, the same has not been finalized. Hence, the writ petition is liable to be dismissed.

The learned counsel appearing for the unofficial respondent No.7 contends that G.O.Ms.No.75 dated 23.09.2002 has no application to the present facts of the case for the reason that by the date of completion of the selection process, the said G.O. has not come into existence. Hence, he pleaded to dismiss the writ petition.

A short point that is involved in the present writ petition is with regard to the procedure to be followed for filling up the aided vacancies of B.Ed., Assistants.

For the first time, the Government in G.O Ms.No.75, dated 23.09.2002 prescribed the ratio for filling up of B.Ed., Assistants. Clause 7 (4) of the said G.O. reads as follows:

> *"Where there is a feeder category for promotion, the vacant aided posts shall be filled in the ratio of 2:1 i.e., 1st and 2nd posts by promotion and 3rd by direct recruitment/absorption."*

Admittedly, the petitioner who is working in the feeder category as SGBT teacher joined the said post in the year 1988. The claim of the petitioner is that 1st and 2nd posts should be filled up from the feeder category and therefore, she has to be appointed in the 1st post of B.Ed., Assistant (Social).

On the other hand, the learned counsel for the unofficial respondent No.7 contends that G.O.Ms.No.75, dated 23.09.2002 is kept in abeyance by G.O.Ms.No.91, dated

12.11.2002 and the same was in force till 30.01.2003. As per G.O.Ms.No.8, dated 30.01.2003, the Government, after reconsidering the entire matter, vacated the order of abeyance issued in G.O.Ms.No.91, School Education, P.S-2 Department, dated 12.11.2002 with immediate effect. The amendment made to G.O.Ms.No.75, dated 23.09.2002 reads as follows:

> "*To fill up the existing vacant Grant-in-aid Teaching/Non-teaching posts, the Private Aided Managements shall follow the Rule 12 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 issued in G.O.Ms.no.1, Education (PS-2) Department, dated 01.01.1994.*"

As rightly pointed out by R-7, the process for filling up of aided vacancies for absorption of persons from unaided vacancies has commenced long prior to the issuance of G.O.Ms.No.75, dated 23.09.2002. As seen from the impugned proceedings dated 03.10.2002 it is clear that the Government of A.P. followed G.O.Ms.No,.75, dated 23.09.2002 for filling up the vacancies. If that is the case, the first and second posts have to be filled up from the feeder categories and the third one by way of direct recruitment/absorption. Even if the seniority list in the feeder category to the post of Senior B.Ed., Assistant (Social) has not been finalized, that does not by itself a ground for rejection of the case of the petitioner and it further does not entitle the management to fill up those posts by way of absorption from the unaided vacancies. As the impugned memo, dated 03.10.2002 suffers from legal infirmities, it is liable to be set aside.

Accordingly, the impugned memo dated 03.10.2002 is set aside with a direction to the fifth and sixth respondents to prepare the seniority list in the feeder categories of S.G.B.T. Teachers and send the same for approval and thereafter, all the B.Ed., Assistant Posts in aided vacancies shall be filled up in accordance with

the Rules. At the time of filling up of three aided vacancies, the case of 7th respondent can also be considered in accordance with the rules.

The writ petition is accordingly allowed. No costs.

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K.C.BHANU J.,

Dt.26.07.2005

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